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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
13 corporation; and CBS STUDIOS INC., a  
Delaware corporation,

14 Plaintiffs,

15 vs.

16 AXANAR PRODUCTIONS, INC., a  
17 California corporation; ALEC PETERS,  
an individual; and DOES 1-20,

18 Defendants.  
19

Case No. 2:15-cv-09938-RGK-E

*Assigned to: Hon. R. Gary Klausner*

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' OPPOSITION TO  
THE LANGUAGE CREATION  
SOCIETY'S APPLICATION FOR  
LEAVE TO FILE BRIEF AS  
AMICUS CURIAE**

Hearing Date: May 9, 2016  
Time: 9:00 a.m.

Original Complaint Filed: 12/29/15  
Amended Complaint Filed: 3/11/16

1 Plaintiffs use their Opposition to the Language Creation Society's ("LCS's")  
2 Application for Leave to File an Amicus Brief (Dkt. 35) to belatedly raise new  
3 arguments in opposition to Defendants' Motion to Dismiss or Strike the First  
4 Amended Complaint ("FAC") (Dkt. 29) ("Motion").

5 First, while Plaintiffs now argue that the Klingon language is "merely one  
6 aspect of the Star Trek Copyrighted Works" and that Defendants' use of Klingon is  
7 "further evidence of their infringement of Plaintiffs' characters" (Dkt. 38 at 3-4), in  
8 the First Amended Complaint ("FAC") Plaintiffs do not limit their allegations in this  
9 way. In the FAC, Plaintiffs claim ownership over "Klingons" as a race (FAC at 12)  
10 and over the appearance of Klingons (FAC at 13-14), and they claim *separately* to  
11 own the "Klingon language" (FAC at 32). In fact, the Klingon language is listed as a  
12 "Star Trek Copyrighted Work" according to the chart in the FAC. *Id.* Plaintiffs are  
13 hard-pressed to link their claim to the Klingon language to an actual character when  
14 their FAC does not identify a single specific Klingon character, let alone any character  
15 they claim Defendants have infringed through using the Klingon language.

16 Second, Plaintiffs argue that whether the Klingon language is protectable as a  
17 matter of law is irrelevant on Defendants' Motion. Not so. Defendants raised the  
18 same fundamental arguments as LCS in their Motion and Reply. Mot. (Dkt. 29) at  
19 20:7-14; Reply (Dkt. 33) at 10:7-19, n. 10-11 at 10:24-28. And the Court must filter  
20 out unprotectable elements when determining whether Plaintiffs have stated a claim  
21 for infringement. Mot. (Dkt. 29) at 17:5-12. Indeed, like recipes in a cookbook, while  
22 the Klingon Dictionary may be protected from wholesale copying, the individual  
23 Klingon words contained therein and expression flowing from the Klingon language  
24 system are simply not protected.<sup>1</sup> This Court should decline to allow Plaintiffs to stifle  
25 expression in Klingon when this matter can be resolved now as matter of law.

26 Third, Plaintiffs argue that the Court should not resolve factual disputes at this  
27 stage. Defendants submit that it is not necessary for the Court to resolve the factual

28 <sup>1</sup> <http://www.copyright.gov/fls/fl122.html>.

1 issue of who began the Klingon language for purposes of their Motion. Plaintiffs’  
2 FAC does not even identify either or both of the Plaintiffs as the copyright owner(s) in  
3 the Klingon Dictionary or the Klingon language.<sup>2</sup> And in response to Plaintiffs’  
4 insistence that it was “absurd” to treat Klingon as a language used by real speakers  
5 (Opp. (Dkt. 31) at 16:14-16), Defendants’ Reply pointed to real Klingon speakers.  
6 Reply (Dkt. 33) at n. 11 at 10:27-28. Unable to counter the undisputed fact that fans  
7 *do* use the Klingon language to communicate, Plaintiffs hope to block the Court’s  
8 consideration purely on evidentiary objections. But regardless of whether the Court  
9 considers any of this evidence, it is not necessary to the Court’s ruling on this issue.

10 Finally, Plaintiffs’ Opposition to the Motion claims that substantial similarity  
11 analysis is “unnecessary” here. Opp. (Dkt. 31) at 11:7-9. But now, Plaintiffs are  
12 reversing course and suddenly claiming that the individual works they alleged in the  
13 FAC are just pieces for a broader substantial similarity analysis. Plaintiffs cannot  
14 invoke the substantial similarity test only when convenient, and cannot complain  
15 about parsing out Plaintiffs’ claim to the Klingon language when their FAC does just  
16 that. FAC at 32. Further, the FAC remains unclear about (1) which episodes and  
17 films that Plaintiffs claim to own are at issue here (rendering it impossible to even  
18 begin to engage in any substantial similarity analysis), and (2) how the Court could  
19 engage in a substantial similarity analysis with respect to the Potential Fan Film when  
20 it has not yet been made.

21 The Court should dismiss and/or strike Plaintiffs’ FAC to the extent that it  
22 attempts to claim copyright protection of the Klingon language.

23 Dated: May 6, 2016

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24  
25 By: /s/ Erin R. Ranahan  
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28 <sup>2</sup> If this claim survives, Defendants intend to investigate ownership of the Klingon dictionary in discovery.